THE HONORABLE BRIAN D. LYNCH 1 **CHAPTER 13 HEARING DATE: November 5, 2019** 2 **HEARING TIME: 1:00 P.M. LOCATION: Vancouver, Washington** 3 4 5 6 7 8 9 10 IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA 11 12 In re: Case No.: 18-42298-BDL 13 ANTHONY ALBERT PANDINA III and TRUSTEE'S RESPONSE TO DEBTORS' MOTION HELEN SHANNON PANDINA, TO AMEND CHAPTER 13 PLAN 14 Debtors. 15 16 **COMES NOW**, Michael G. Malaier, Chapter 13 Standing Trustee, and responds to Debtors' 17 Motion to Amend Chapter 13 Plan, as follows: 18 BACKGROUND 19 Debtors filed this Chapter 13 case on June 29, 2018. The applicable commitment period is sixty 20 months. The case is currently in the sixteenth month. The bar date for filing non-governmental claims 21 was September 7, 2018. Filed unsecured claims total \$181,897.86. Debtors propose to pay at about fifty-22 percent to allowed nonpriority unsecured claims. Debtors are presently delinquent in plan payments in 23 the amount of \$6,269.00. 24 25 Michael G. Malaier Chapter 13 Standing Trustee RESPONSE

2122 Commerce Street Tacoma, WA 98402 (253) 572-6600

RESPONSE

Trustee objects to the debtors seeking to forgive approximately \$6,000.00 in plan payment arrears through paragraph 10 of the amended plan. Debtors have been making payments through TFS. While debtor's declaration does state that debtors have been struggling to make their plan payments, the declaration does not identify any specific hardship. Furthermore, debtors' income has actually increased since filing. Debtors claimed \$12,679.98 in gross income at the time of filing. ECF #1, pg. 42. Based on the supplemental schedules filed on September 30, 2019, debtors are now making \$13,510.79 per month gross. Debtors also reduced the pension income on the supplemental schedule I by about \$200.00 without explanation, which would further increase their post-confirmation gross income. As a result, debtors appear to have chosen not to make their required payments through TFS despite having more income.

Debtors have also increased their expenses by \$2,328.00 per month. A chart detailing the changes in income and expenses is attached hereto as exhibit A. Although \$1,200.00 of these expenses are attributable to debtors backing out VA disability, the debtors have increased their discretionary expenses by \$1,375.00, while at the same time decreasing the percentage distribution to unsecured creditors.

Trustee further objects to the debtors removing VA disability from their income on the supplemental schedule I, which appears to be the primary reason the modified plan was filed. ECF # 19. This modification is not being done in good faith. Debtors are above median income debtors with a monthly disposable income at the time of filing of \$2,020.77 per month. Debtors have not identified any financial change in their circumstances that would necessitate a plan modification, and in fact have increased income. Instead, debtors appear to be relying on the idea that the HAVEN act has a retroactive effect for confirmed plans. This issue is not addressed, however, in debtors' moving papers, and debtors have set the response date on this motion several days short of the response date required under the local

1	rules. Therefore, Trustee requests that the court set a briefing schedule so these issues may be fully
2	addressed and properly briefed.
3	WHEREFORE , Trustee requests that the Court set a briefing schedule for the above issues.
4	DATED this 24th day of October, 2019.
5	
6	/s/ Matthew J.P. Johnson
7	Matthew J.P. Johnson, WSBA# 40476 for Michael G. Malaier, Chapter 13 Trustee
8	
9	CEDTHEICATE OF MAILING
10	<u>CERTIFICATE OF MAILING</u>
11	I certify under penalty of perjury under the laws of the United States that on October 24, 2019, I caused to be mailed via first class mail a true and correct copy of the Trustee's Response to Debtors' Motion to Amend Chapter 13 Plan to the following:
12	
13 14	Anthony Albert Pandina III Helen Shannon Pandina 20413 NE 161 st Street Brush Prairie WA 98606
15	The following parties received Trustee's Response to Debtors' Motion to Amend Chapter 13 Plan
16	via ECF:
17	Ellen Ann Brown United States Trustee
18	Executed at Tacoma, Washington this 24 th day of October, 2019.
19	
20	/s/ Ruth Wilson Motion Coordinator for
21	Michael G. Malaier, Chapter 13 Trustee
22	
23	
24	
25	
	Michael G. Malaier

Michael G. Malaier Chapter 13 Standing Trustee 2122 Commerce Street Tacoma, WA 98402 (253) 572-6600